IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.2746 of 1998
Dated of decision : 30.11.2006

National Insurance Company Limited, Chandigarh

.....Appellant

Versus

Phool Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE MAHESH GROVER

.....

Present : Mr.R.M.Suri, Advocate
for the appellant.

Mr. Gaurav Sethi, Advocate for
Mr. Sanjay Mittal, Advocate
for respondent No.1.

...

MAHESH GROVER, J.

In the present appeal initiated at the behest of the insurance company challenge has been made to the award of the Motor Accident Claims Tribunal, Narnaul dated 16.9.1998 on the question of liability of the appellant.

In a motor vehicular accident, which is stated to have taken place on 24.10.1995, 12 persons, including the respondent No.1, while travelling in a TATA-407 truck, were injured when it turned turtle due to rash and negligent driving.

Various petitions for grant of compensation under the Motor Vehicles Act, 1988 were filed by the claimants claiming

compensation on account of the injuries sustained by them in the abovesaid accident. The Tribunal answered the petitions in the affirmative and granted compensation to the injured persons. Aggrieved by the said award the insurance company has filed seven appeals out of which six have been disposed off vide a separate common order and the present one is being disposed of separately.

The matter was earlier disposed of by a Division Bench of this Court on 4.3.1999 against which the appellant preferred Civil Appeals bearing Nos.2654-2660 of 2000 and vide order dated 20.4.2006 the Hon'ble Supreme Court remanded the matter back to decide it afresh "in the light of law laid down in **New India Assurance Co.Ltd. v. Asha Rani**, (2003) 2 SCC 223."

In this backdrop, the present appeal is being heard afresh.

Mr. R.M.Suri, learned counsel for the appellant raised only one contention that the injured was travelling in a goods vehicle and the insurance company is not liable to indemnify the owner for carrying passenger as it amounts to a breach of the condition of the policy and prayed for recovery rights to be granted to it. Apart from **Asha Rani's case** (supra), reliance was placed on **Oriental Insurance Company Ltd. v. Devireddy Konda Reddy** (2003-2) 134 P.L.R. 47 (S.C.), **National Insurance Co. Ltd. v. Ajit Kumar and others** (2004-1) 136 P.L.R. 153 (S.C.), **National Insurance Co. Ltd. v. Baljit Kaur and others** 2004 ACJ 428, **National Insurance Co.Ltd. v. Bommithi Subbhayamma and others** (2005-3) 141 PLR 546 and **United India Insurance Co.Ltd. Shimla v. Tilak Singh**

and others (2006-2) PLR 297.

The contention of the learned counsel for the appellant was sought to be repelled by the learned counsel for the respondent-claimant on the ground that the claimant was in fact accompanying his goods and was going to join his duty. He was, thus, not a gratuitous passenger as was being contended by the learned counsel for the appellant.

We have heard the learned counsel for the parties at length.

The only question that has to be determined is whether the claimant was the gratuitous passenger so as to exclude the insured from the purview of the policy as it amounted to a breach of a condition thereof. To establish the factum of the status of the claimant in the light of the provisions of the amended provisions of Section 147(1), we have also perused the evidence with specific reference to the cross-examination of the witness.

The view aforesaid was determined by the Hon'ble Supreme Court in **Asha Rani's case** (supra) and followed in **Devireddy Konda Reddy's case** (supra) and later on again by a three-judge Bench of the apex court in **Baljit Kaur's case** (supra).

While considering the effect of the amendment carried out in Section 147 of the Motor Vehicles Act, 1988 by Motor Vehicles (Amendment) Act, 1994 it was opined:

> "By reasons of the 1994 amendment what was added is, including owner of the goods or his authorised representative carried in the vehicle. The liability of the

owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of Parliament, therefore, could not have been that the words any person occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of Parliament to carry out an amendment inasmuch as the expression 'any person' contained in Sub clause (i) of Clause (b) of Sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

The observations made in this connection by the Court in Asha Rani (supra), to which one of us, Sinha, J., was a party, however, bear repetition:

'(26) In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words 'any person' must also be attributed having regard to the context in which they have been used, i.e. , a 'third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would

not be liable therefore.'

In Asha Rani (supra), it has been noticed that Sub-Clause (i) of Clause (b) of Sub-section (1) of Section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of vehicle in a public place. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 amendment would only cover a third party as also the owner of the goods for his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorised representative remains the same. Although the owner of the goods or his authorised representative would not be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such

category of people."

The same view was further reiterated in **Parmod Kumar Agrawal v. Mushtari Begum** (2005-3) 141 P.L.R. 540 (S.C.). In the light of observations made by the Hon'ble Supreme Court by dissecting provisions of Section 147, it is clear that the words 'any person' occurring in the said section would not cover all persons who were travelling in goods carriage in any capacity, but would certainly include the owner of goods or his authorised representatives.

Claimant Phool Singh while appearing as PW4 testified that he was working with the CRPF and was going to join his duty. He had a leave certificate with him and had boarded the ill-fated vehicle and paid Rs.100/- to travel in it. He was carrying a box, suit case and bed holder, reflective of the fact that he was going to join the duty. He was thus clearly a gratuitous passenger and the appellant will certainly not be liable to satisfy the award in so far the claim in the present appeal is concerned and accordingly the owner is held liable to satisfy the award as he had operated the vehicle in violation of the terms of the policy.

In view of the fact that the claimant was a gratuitous passenger, the appellant after satisfying the award in the first instance shall be at liberty to recover the amount from the owner of the vehicle who had violated the conditions of the policy in so far as the present claimant is concerned.

Accordingly, the appeal is allowed in the terms indicated above.

(UMA NATH SINGH)
(JUDGE)

(MAHESH GROVER)
JUDGE

November 30, 2006

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